457.

SUPREME COURT OF THE UNITED STATES.

No. 206.

THE UNITED STATES, APPELLANTS,

vs.

ANDRES DUARTE.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Proceedings before commissioners	1	1
Petition of claimant	3	1
Deposition of Abel Stearns	5	2
Espediente	6	3
Map	7	3
Translation of Exhibit 2	12	6
Possession	15	8
Document "H.H," No. 1, annexed to deposition of Stearns	16	8
Translation of grant and judicial possession	23	12
Opinion of commissioners	28	16
Decree of commissioners	29	16
Certificate of secretary	30	17
" " clerk dist. court	31	17
Proceedings in dist. court	32	18
Notice of appeal	34	19
Petition for review	34	19
Answer to petition	39	23
Motion for order to take testimony	40	24
Testimony of Francisco Ocampo	41	25
Stipulations	46	28
Decree of dist. court	48	29
Order of appeal	49	30
Clerk's certificate	50	30

GIBSON, print.

Transcript of the Proceedings in case No. 374—Andres Duarte, claimant, vs. The United States, defendant—for the place named "Azusa."

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on the fifth day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a Board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Andres Duarte for the place named Azusa was presented, and ordered to be filed and docketed with No. 374, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon this petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Nov. 4th*, 1852.

In case No. 374, Andres Duarte, for the place named "Azusa," the deposition of Abel Stearns, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H.H, No. 1, and translation thereof marked B annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *Aug. 16th*, 1853.

Case No. 374, Andres Duarte, for the place named "Azusa,' called: The counsel for the claimant read the evidence—argued, submitted, and taken under advisement.

SAN FRANCISCO, *Nov. 4th*, 1853.

In case No. 374, Andres Duarte, for the place named "Azusa," Commissioner Alpheus Felch delivered the opinion of the Board confirming the claim.

(Vide page 28 of this Transcript.)

Petition.

To the Hon. the Board of U. S. Land Commissions appointed to settle private land claims in California.

The petition of Andres Duarte respectfully showeth: That, on or about the 10th day of May, A. D. 1843, Juan B. Alvarado, then governor of California, in the name of Mexican nation, by virtue of the colonization laws of August 18th, 1824, the regulations of Nov. 21st,

1828, the various laws of Mexico in force at the time, the customs and usages of the country affecting grants of land in California, granted in full property unto your petitioner the tract of land known by the name of Azusa, bounded to the east by the rancho of Luis Arenas, to the west by the boundaries of Santa Anita, to the north by the Sierra, and to the south by the road called Papas, containing one and a half square leagues, a little more or less, as described in the papers and map relating to the grant of said tract of land. Copies of all said papers and maps are herewith filed, and your petitioner prays leave to refer to the same as part of this petition. And your petitioner further showeth, that on or about the 9th day of June, A. D. 1841, your petitioner was placed in juridical possession of said tract of land or rancho by the proper officer having jurisdiction and authority of the subject-matter, as appears by the original papers in the possession of your petitioner, ready to be produced and proved. That copies of said papers herewith filed, to which your petitioner prays leave to refer as part of this petition. The said lands have always, since the date of said grant, been in the quiet and peaceable possession of your petitioner, and your petitioner at the present time is in the quiet and peaceable possession of said lands.

There is no conflicting claim thereto known to your petitioner, unless it may be some pretensions on the part of the U. S. Government, in violation of the rights of private property, the laws of civilized nations, and the spirit of the treaty of Guadalupe Hidalgo, between said Government of the U. S. and Mexico. That said lands have not been surveyed by the U. S. surveyor general for California, but have been surveyed and measured at the instance of your petitioner.

The evidence upon which your petitioner relies in this case are the records of this grant, papers and maps, in the office and in the custody of the U. S. surveyor general for California, original papers in the hands of your petitioner relating to said tract of land; copies of all said papers and maps are herewith filed, to which your petitioner prays leave to refer as part of this petition, and the testimony of witnesses to be produced before your hon. board.

Respectfully submitted, for such action as the justice and nature of the claim may require.

E. O. CROSBY,
Of counsel for Claimants.

Filed in office, Oct. 6th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Abel Stearns.

LOS ANGELES, *Nov. 4th*, 1852.

On this day, before Com'r Hiland Hall, came Abel Stearns, a witness in behalf of the claimant, Andres Duarte, petition No. 374, and was duly sworn, his evidence being given in English. The U. S. associate law agent was present.

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In answer to inquiries by counsel for the claimants, the witnesses testified as follows:

My name is Abel Stearns; my age is fifty-four years, and I reside in Los Angeles; I have resided in California over twenty-three years; I am acquainted with the handwriting and signature of Juan B. Alvarado, Manuel Jimeno, Narcesa Botello, Ignacio Palomares, Ignacio Coronel and Francisco Ocampo. A paper is now shown me purporting to be a grant to Andres Duarte, of land called Azusa, dated 10th day of May, 1841, to which is attached a testimonial of judicial possession in June, 1841. I have examined the signatures of the said several persons, appearing upon said paper, and I believe them to be genuine; (said paper is hereto annexed, marked H.H, No. 1;) said Palomares was at the time of said judicial possession an acting justice of the peace, and, as such, authorized to give it. I know the rancho mentioned in said papers.

Andres Duarte was, I think, in possession of the land before it was granted to him; he certainly was soon afterwards. He built a house on the land and lived in it with his family, and still remains there.

He has had considerable land under cultivation, and had cattle and horses.

ABEL STEARNS.

Sworn and subscribed before me,

HILAND HALL, *Com'r.*

Filed in office, Nov. 4th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

1 S. D. K.

Espediente promovido pr. el Cno. Andres Duarte en solicitud del parage llamado "Azusa," año de 1841.

(236.)

[*For map see original, page* 7.]

3 S. D. K.—Sello Tercero, Dos Reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

[ ]

S'or Prefecto del 2o Distrito:

Andres Duarte vecino de esta ciudad ante V. S. con el debido respeto y como mas haya lugar en d'ro; comparesco y digo que habiendo podido conseguir en fuerza de mis afanes y trabajos la contidad comode tres á cuatro cientos cabezas de ganado vacuno y caballar, y dificultan doseme su á del anto por falta de terreno proprio por ello. Ocurro á la autoridad de V: S. suplicandole que impuesto del diseño que debedam'to acompaño, se digne hacer ql. esta mi solicitud corra los tramites de estilo hasta elevarlo al gobierno departamental esperando de la bondad de V. S., que estando al alcanze de mi conducta se servira informarlo como pido cuyo gracia resulterá en beneficio de mi familia.

Por el espresado diseño se ve con claridad que el terreno q. pretende consta de una legua poco mas de longo, y como media de ancho es de los que se han conocido por de la mision de San Gabriel, y colinda con el rancho de Dn. Luis Arenas, llamado Azusa, del mismo nombre del ql. solicita, y con el de Sta. Anita perteneciente á la Esposa de Dn. Hugo Reid, pero sin ql. estas dos fincas ni á otra propiedad les resulta ningun perjuicio como se vera por los infirmes ql. regularmente se pediran bajo este supuesto. A V. S. pido y suplico ql. atendiendo á la Sencillez de mi solicitud, se sirva admitirlo y favoresela con la integridad ql. le es caracteresca.

ANGL., *Abril* 28, *de* 1841.

Arruego de Andres Duarte pr. no saber escribir.

FELIPE CARILLO.

ANGL., *Abril* 28, *de* 1841.

Informe el S'or Juez 1o de paz del contenido decita insta. de el terreno ql. se solicita corresponde á comunidad ó propriedad particular, y si interesado tiene los requisitos necessarios pa. su atendida con todo lo demas ql. le parezca conveniente á ilustrar la materia, y evacuado en informe pase al S. ministro ó mayordomo de la mision del gobe., pa. ql. s eproduzca el suyo en cuanto á aquella comunidad, y vuelve paproverlo conveniente.

ARGUELLO.

S. S. D. K.

Sello Tercero, Dos Reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

[ ]

S'or Prefo. del 2 Do.:

El terreno que solicita el vecino Andres Duarte aunque es conocido por de la mision de S. Gabriel, por á hora se halla valdio y sin bienes,

de esta finca como igualmente no toca á los ranchos que espresa por lo que se V. S. tiene á bien puede informar en favor del solicitante.

Y. JNO. PALOMARES.

Ang'les, Abr. 28, de 1841.

S. GABRIEL, *Abril* 28, *de* 1841.

La concepcion del terreno que solicita pr. el anteced'te solicitud en nada ql. perjudica á esta mision por lo que el gobo. hara lo que halla pr. conveniente.

[6 S. D. K.] FR. TOMAS ESTEÑAGO.

Ex'mo Señor:

Practicados los informes de estilo en la instancia del C'no Andres Duarte, refereiente al sitio que solicita, aparese no en contrarse obstaculo á su concesion, y p'a lo q'l respecta á los requisitos q'l debe tener p'a ser. atendida tiene bienes suficientes de ganado vacimo y caballar p'a cubrirlo, es ciudadano Mejicano de buena conducta, sirviendo con honradez en la clase de soldado y cabo de la compania de S'n Diego, hasta que obtuvo su licencia por lo que en vista de lo espuesto V. E. se sirvirá desponer lo q'l fuese de su sup'or agrado.

Angeles, Abril 29, de 1841.

S. ARGUELLO.

NARCISO BOTELLO, *Sec'to*.

7 S. D. K.

MONTEREY, 10 *de Mayo*, *de* 1841.

Vista la petiticion con que da principio este espediente los informes del S'or prefecto del segundo distrito, el del R. P. M'tro de San Gabriel, y el del juez de la ciudad de Los Angeles, contado lo demas que se tabo presente y ver convino de conformidad con las leyes y reglamentos de la materia, se declaro al C'no Andres Duarte dueno en propriedad del terreno conocido con el nombre de Asuza, colindante al S. con el camino de las Papas, al N. con la Sierra, al E. con el rancho de Don Luis Arenas, y O. E. con el rancho de Santa Anita, sugeto á pagon el cañon que se le emprega si resultare pertenicer el terreno á las ejidas del pueblo de San Gabriel cuando se arreglan sus limites y á las condiciones que se estipularen. Estiendose el despacho correspondiente, tomase razon en el libro respectivo y dirigase este esped'te á la ex'mo junta departamental, para su aprobacion el S'or Don Juan B. Alvarado, gob'o constitucional del departamento de las Californias, asi lo mando, decreto y firmo, de que doy fe.

8 S. D. K.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under

my charge and control, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the eight preceding and hereunto annexed pages of tracing paper, numbered from one to eight inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., this 23d day of October, 1852.

[ ] SAM'L D. KING,
Surv'r G'ral, Cal.

Filed in office, Aug. 8th, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit 2.

Third class Stamp, Two-eighths of one dollar.

Issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty, and one thousand eight hundred and forty-one.

JIMENO. ANTO. M'A OSIO.

[L. S.]

Señor Prefect of the 2nd District:

I, Andres Duarte, a resident of this city, before your honor, with due respect and in the most acceptable form of the law, do appear and say, that having succeeded, by dint of my exertions and toils, in getting some three or four hundred head of neat cattle and stud, and its increase becoming difficult, on account of my having no land suitable for that purpose, I apply to the authority of your honor, imploring you that on reviewing the design which I duly subjoin, you may vouchsafe to cause this, my petition, to take the due formal course of law and finally be forwarded to the departmental government; hoping, from the goodness of your honor, that, being informed of my habits, you will be pleased to report this same as I request, which favor will result to the benefit of a family.

The said design shows with clearness that the tract which I claim consists of a little more than one league in length and about one-half in width; it is one of those which have been considered to belong to the Mission of San Gabriel, and it is bounded by the rancho of Dn. Luis Arenas, called Azusa, the same as that of the tract which I solicit, and by the rancho of Sta. Anita, belonging to the wife of Don Hugo Reid, but to neither of those two estates nor to any other property will any prejudice result, as will appear by the reports to be regularly asked for. Under

this I ask and beseech your honor, that, considering the simple nature of my petition, you may be pleased to admit the same, and to look upon it with favor, according to your characteristic integrity.

Angeles, April 28th, 1841.

At the request of Andres Duarte, he not knowing how to write.

FELIPE CARRILLO.

[L. S.]—Stamp clause as above.

ANG'S, *April* 28, 1841.

Let the honorable of the first justice of the peace report concerning the contents of this petition, whether the premises claimed belong to any community or private property, and whether the party interested possesses the necessary requisites for his petition to be entertained, together with all besides, that may appear to him proper to elucidate the matter; and this being reported, let the minutes be sent to the father minister or mayordomo of the Mission of San Gabriel, that he may make his report as regards that community, and let return be made for such as be behooving.

ARGUELLO.

To the honorable Prefect of the 2nd District:

The tract solicited by Andres Duarte, a resident of this place, although considered as belonging to the Mission of San Gabriel, I know, by inspection, to be unoccupied, and without any stock of that establishment. It also adjoins the rancho in that behalf mentioned. Wherefore, if your honor be so inclined, a favorable report for the petitioner can be made.

Angeles, April 28th, 1841.

IGNO. PALOMARES.

SAN GABRIEL, *April 28th*, 1841.

The granting of the tract solicited by the foregoing petition does not in any way prejudice the mission. Wherefore the government will do whatever they may find proper.

FR. THOMAS ESTENAGO.

Your Excellency:

Upon the coming in of the usual formal reports, concerning the petition of the citizen Andres Duarte, it appears that there is no obstacle to the grant being made to him, as it regards the requisites which he must have in order that his claim may be entertained; he is owner of sufficient stock, neat and stud, to stock the premises. He is a Mexican citizen, of good habits, who honorably served as a soldier and corporal in the company of San Diego until he obtained his discharge; wherefore, in consideration of the aforesaid, your excellency will be pleased to determine according to your superior pleasure.

S. ARGUELLO.

Angeles, April 29, 1841.

NARCISO BOTELLO, *Sec'y*.

MONTEREY, 10*th May*, 1841.

In view of the petition wherewith these proceedings originate: The reports of the hon. Prefect of the second district, that of the rev. father minister of San Gabriel, and of the judge of the city of Los Angeles, together with all other things that were brought forward and it was behooving to keep it in view, in conformity with the laws and regulations affecting the matter, the citizen Andres Duarte is declared to be owner in absolute property of the tract known by the name of Azusa, bounded south by the Papas road, north by the Sierra, east by the rancho of Don Luis Arenas, and west by the rancho of Santa Anita, and subject to the tax which may be imposed upon it in case it turns out to belong to the commons of the pueblo of San Gabriel, whenever its limits shall be assigned, and also to the conditions that may be stipulated.

Let the proper patent be made out, be entered of record in the proper book, and let the minutes be forwarded to the most excellent departmental junta for its approval. The citizen Dn. Juan B. Alvarado, constitutional governor of the department of California, has so ordered, decreed, and subscribed, which I certify.

Filed in office, August 8th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Doc. H.H, No. 1, *annexed to the Deposition of Abel Stearns, taken before Com'r Hall.*

Posecion de Don Andres Duarte, año de 1841.

Sello 1o, Seis Pesos.

Habilitado provisionalmente por la Aduana Maritima de Monterey, para los años de 1839 y 1840.

ALVARADO. ANTONIO M'A OSIO.

Volga por los años de 1841 y 1842.

ALVARADO. ANTONIO M'A OSIO.

[ ]

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias:

Por cuanto el Ciudadano Andres Duarte, ha pretendido para su beneficio personal, y el de su familia el paraje conocido con el nombre de Asusa, colindante al este con el rancho de Dn. Luis Arenas, al oeste con las linderas de Santa Anita, al norte con la sierra y el sur con el camino llamado de las Papas; practicadas previamente las diligencias y averiguaciones concernientes, segun lo dispuesto por leyes y reglamentos usando de las facultades que son conferidas á nombre de la nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sugeto á pagar el cañon que se le imponga si resultare pertenencia á las proprias de San Gabriel, cuando se determinan sus limites, á la aprovacion de la Ex'ma Junta Departamental, y á las condiciones siguientes:

1o. Podra sercarlo sin perjudicar las travesias, caminos y servidumbres; lo disfrutará libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estará habilitada.

2o. Solicitará del juez respectivo que le de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos, en cuyos limites pondra á mas de las mojoneros algunos, arboles, frutales, ó silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de un sitio y medio de ganado mayor, poco mas ó menos segun explica el diceño que corre en el espediente. El juez que diese la posecion lo hará medir conforme à ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro que corresponde, y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, á diez de Mayo, de mil ochocientos cuarenta y uno.

JUAN B. ALVARADO.
MAN'L JIMENO, *Secr'to.*

Queda tomada razon de este despacho en el libro de adjudicaciones de terrenos valdios á pa. 4 va.

JIMENO.

El Ex'mo S'r Gobernador ha dispuesto se tome razon de esta concession en la prefectura del 2d distrito.

JIMENO.

Ang'l, Mayo 28, de 1841.

Con esta f'ha queda tomada razon de este titulo á yl. 3 jst'e del libro respetivo elevado en la prefectura del 2a distrito.

NARCISSO BOTELLO, *S'rio.*

Sello Tercero, Dos Reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

[ ]

En la ciudad de Los Angeles, del departamento de las Californias, á los siete dias del mes de Junio, de mil ochocientos cuarenta y uno, armente á la solicitud verbal ocha por D. Andres Duarte, á fin de que

se le de la correspondiente posecion del sitio llamado Azusa concedido por el superior gobierno departamental, cayo titulo lo presente en el acto. Pasase por mi y testigoes de asistencia al espresado sitio, y procedase á don la posescion indicada previa citacion de colindantes arreglandose al repitido titulo ó despacho que se le ha conferido por el E. S. gobernado con f'ha lo de Mayo del presente año. El ciudadano Ignacio Palomares, Juez 1o. de Paz y des 1o. instancia, asi lo preveye mande y firme por ante los testigos de asistencia con quienes acruo por reciprocia á falta de escribano publico, doy fé.

YGNACIO PALOMAREZ.

Ass'a: YGNACIO CORONEL.
Ass'a: FRANC'O OCAMPO.

En ocho de Junio, de mil ochocientos cuarenta y uno, yo el propria juez pase, aviso á los señores colindantes.

Sello Tercero, Dos Reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARI'A OSIO.

Manifestandoles el objeto á que me dirigia al terreno immediato al Rio de Asuza puesiba á remedirlo, y poner en posecion á D. [ ] Andres Duarte, y de estos no manifestó escepcion otro sino Don Hugo Reid por los linderos de Santa Anita, pero logrando a venirlo, y marcar con la claridad necesaria los linderos ó linea division á les digo procedase á las medidas indicadas, lo que pongo por diligencia que autorise y forme con los de su asistencia, segun d'ro.

IGNACIO PALOMARES.

Asistencia: IGNACIO CORONEL,
Asistencia: FRANC'O OCAMPO.

Tachado un renglon no vale.

En el mismo dia y año hallandome en la orilla del Rio Azusa, para la practica de d'ho diligencias nombre dos officiales cordeleros los que por no saber escriber se orniten sus nombres, á quienes hice saber el acto de su nombramiento, el que aceptaron bajo del juramento respetivo ofreciendo desempeñar fielmente en encargo lo que autorise y firme con mis testigos.

Sello Tercero, Dos Reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

[ ]

De asistencia, segun d'ro. IGNACIO PALOMARES.

Asistencia: YGNACIO CORONEL,
Asistencia: FRANC'O OCAMPO.

En ocho de Junio del presente año aun permaneciendo en la orilla del rio, á efecto á verificar las remididas, y posecion que corresponde á D. Andres Duarte, del sitio nombrado Azusa, y hoy Santo Domingo previas todos las requisitas de ley, estando ante mi y los testigos de asistencia y los oficiales cordeleros hise medir en cordel que contenia cien varas, y atando hacia sus estremos unos somcos de madera, prev a observacion y contento por mi disposicion se tiro el primer cordel á linea pegado á la sierra contigua á los linderos de arenas punto este se midieron, y contaron cinco mil varas que rematam al oeste en un roble ql. se marco por mojonera dandole unas machetazas como lindero de Santa Anita, desde este punto oeste se cambio el rumbo.

Sello Tercero, Dos Reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.

XIMENO. ANTONIO MARIA OSIO.

A seguir de norte a sur y se contaron y midieron cinco mil varas que remataron, en un Aliso arlo quedando del pie immediato [ ] á las Papas el que tambien sepaso por mojonera. De aque se vario el rumbo mediendo de oeste á este cinco mil varas que remataron en la orilla del rio de Azusa, el sirve de lindero Arenas. De aqui tomando el punto sur para cambiar la direccion se tiro el cordel por la orilla del rio, y se medieron contaron cinco mil varas que remataron al pie de la sierra bajo al norte, quedando por esta ultima medida concluido, el acto y echo todo á satisfacion del interesado al que se le impuso seriamente persiese unas mojoneras de piedra, en los puntos que le corresponden para evitar desputas de lo que quedo entendido, para que le sirviese en señas de posecion lo que autorise y firme, segun d'ro.

IGNACIO PALOMARES.

Asistencia: IGNACIO CORONEL,
Asistencia: FRANCISCO OCAMPO.

Sello Tercero, Dos Reales.

Habilitado provisionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos y cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

XIMENO.
[ ]

ANGELES, *Junio* 9, *de* 1841.

Hallandose concluidas los diligencias de este espediente que es de Asusa, promovido por D. Andres Duarte desele testimonio para su se-

guridad y fines consiguientes. El Ciudan'o Palomarez, Juez 1o de paz y de la instancia, asi lo decreto, mande y firme, con los de asistencia, segun d'ro.

IGNACIO PALOMARES.
RAMON.

Asistencia: IGNACIO CORONEL,
Asst'a: FRANCISCO OCAMPO.

En la misma fecha se dio al interesado el testimonio respectivo y para constancia rubrique.

Concuerda con su original a que remito del cual esta fielmente sacado corregido y confrontado, en estas seis fojas de papel sellado existiendo el otro en libro de instrumentos publicas.

Sello Tercero, Dos Reales.

Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ANTONIO MARIA OSIO.

XIMENO.

[ ]

Del presente año. En testimonio de verdad.

IGN'O PALOMARES.

Assa: IGN'O CORONEL.
Assa: FRANC'O OCAMPO.

Filed in office, Nov. 4th, 1852.

GEO. FISHER, *Sec'y.*

Translation of Grant and Judicial Possession.

First class Stamp, Six dollars.

Issued provisionally by the maritime customs of Monterey, for the years 1839 and 1840.

[L. S.] ALVARADO. ANTONIO MA. OSIO.

Good for the years 1841 and 1842.

ALVARADO. ANTONIO MA. OSIO.

Whereas, the citizen Andres Duarte has claimed for his personal benefit, and that of his family, the tract of land known by the name of Azusa, bounded to the east by the rancho of Don Luis Arenas, to the west by the boundaries of Santa Anita, to the north by the Sierra, and to the south by the road called Papas, the appropriate proceedings and instigations having first been instituted, according to the tenor of the laws and regulations. In the exercise of the powers vested in me, in the name of the Mexican nation, I have come to grant unto him the aforesaid tract, declaring unto him the ownership thereof by these pre-

sent letters, subject to the payment of the fee (canar) which may be assessed upon him, if, when the boundaries of San Gabriel are determined, said land should prove to be the property of said mission, (subject, also,) to the approbation of the most excellent Departmental Assembly, and the following conditions:

1. He may fence it without prejudice to the cross-roads, highways and rights of way; he may enjoy it freely and exclusively, devoting it to such use or cultivation as may best suit him: but within one year he shall erect a house and it shall be inhabited.

2. He shall petition the judge who has jurisdiction to give him juridical possession in virtue of this grant. Such judge shall mark out the boundaries, in whose lines there shall be placed, besides the landmarks, some fruit or serviceable forest trees.

3. The tract in question is of one and a half range (sitio) for neat cattle, little more or less, according as explained by the design annexed to the minutes of these proceedings. The judge who may give the possession shall cause it to be measured, according to ordinance. Any surplus that may result remaining the property of the nation for its behooving uses.

4. If he shall contravene these conditions, he shall lose his right to the land, and it may be denounced by another.

Wherefore, I order that this title, being held firm and valid, be entered of record in the book where it belongs, and delivered to the party in interest for his protection and other ends.

Given at Monterey, the tenth of May, eighteen hundred and forty-three, (one.)

JUAN B. ALVARADO.
MANUEL JIMENO,
Secretary.

This grant is entered of record in the book of adjudications of unoccupied lands, pages 4, &c.

JIMENO.

His excellency the governor has ordered that this grant be entered of record, in the prefecture of the 2d district.

JIMENO.

Angeles, May 28th, 1841.

On this date this title is entered of record, at p'e 3, &c., of the appropriate book kept at the prefecture of the 2d district.

NARCESO BOTELLO, *Sec.*

[Third class Stamp, Two-eighths of a dollar.]

Issued provisionally by the maritime customs of the port of Monterey, in the department of the Californias, for the years eighteen hundred and forty and eighteen hundred and forty-one.

JIMENO. ANTONIO MARIA OSIO.

[L. S.]

At the city of Los Angeles, of the department of the Californias, on the seventh day of the month of June, one thousand eight hundred and forty-one, in compliance with the verbal petition made by Don Andres Duarte, to the end that the appropriate possession of the tract Assusa, granted by the superior departmental government, the title whereto he presented at the time of making petition: Ordered, that I repair with my attesting witnesses to the said place, and proceed to give the said possession, after summons to owners of adjoining lands, in accordance with the direction of said title or patent which was conferred upon him by his excellency the governor, under date of 10th of May of the present year. I, the citizen Ignacio Palomares, first justice of the peace and of the first instance, have so provided, ordered, and subscribed, in presence of the attesting witnesses, with whom I act *ad interim*, there being (there being) no notary public.

IGNACIO PALOMARES.

Certified: FRANC'O OCAMPO.

Attest: IGNACIO CORONEL.

On the eighth of June, one thousand eight hundred and forty-one, I, the judge in person, served notice upon the owners of adjoining lands,

[L. S.—Stamp clause, as above.]

stating to them the object of my visit to the premises situate on the river Azusa, viz: that I was going to survey the same and put Don Andres Duarte in possession. None of them offered any objection save Don Hugo Reid, on account of the boundaries of Santa Anita; and having succeeded in reconciling him, and marking with the requisite clearness the boundaries or dividing line, I stated that I would proceed to the survey aforesaid, whereof I take note, certifying and signing the same with my attesting witnesses, according to law.

IGNACIO PALOMARES.

Attest: IGNACIO CORONEL,
Attest: FRAN'CO OCAMPO.
(Effaced one line out.)

On the same day and year being on the bank of the river Azusa, for the purpose of carrying out these proceedings, I appointed two official line-bearers, whose names, they not knowing how to write, are omitted. I notified them of their appointment, which they accepted, under the oath of office, promising to fulfil their charge faithfully. Certified and subscribed by me and the

[L. S.—Stamp clause, as above.]

attesting witnesses, according to law.

IGNACIO PALOMARES.

Attest: IGNACIO CORONEL,
Attest: FRAN'CO OCAMPO.

And the eighth day of June of the present year, still being on the bank of the river, for the purpose of effecting the survey and delivery of possession to Don Andres Duarte is entitled of the tract called Azusa, (this being the Holy Sunday,) before me and my attesting witnesses, and the official line-bearers, I caused to be measured a line consisting of one hundred varas, and fastening wooden poles towards its ends, after observation and calculation under my direction, the first was drawn on a straight line close to the Sierra, from the bank of the river Azusa contiguous to the boundaries of Arenas; on the east there were measured and counted five thousand varas, which terminated westwardly at an oak (roble) which was marked for a landmark, with a few strokes of the cutlass, as the boundary of Santa Anita, from this westerly point.

[L. S.—Stamp clause, as above.]

The course was changed from north to south, and there were counted and measured five thousand varas which terminated at a tall alder tree, burned at the foot, adjoining the Papas, which was assigned also as a landmark. Thence the course was altered measuring from west to east five thousand varas, which ended at the bank of the river of Azusa, which answers the boundaries of Arenas. Thence taking a southerly (course) to *to* change the direction, the line was drawn along the bank of the river, and there were measured and counted five thousand varas, which ended at the foot of the Sierra at the north. The proceedings being concluded by this last measurement, and all being done to the satisfaction of the party in interest, who was severally enjoined to set up stone landmarks at the appropriate spots to avoid disputes, of which injunction he took due notice, the same to serve as taken of possession.

I certified the above, and subscribed according to law.

IGNACIO PALOMARES.

Attest: IGNACIO CORONEL.

[L. S.—Stamp clause, as above.]

Attest: FRANC'O OCAMPO.

Angeles, June 9th, 1841.

On the conclusion of the proceedings in this matter, viz: in the matters of Andres Duarte's petition for the tract of Azusa, let certificate be issued to him for his security and further purposes.

I, the citizen Ignacio Palomares, first justice of the peace, and judge of the first instance, have so decreed, ordered and subscribed, with my attesting witnesses, according to law.

IGNACIO PALOMARES.

Attest: IGNACIO CORONEL,

Attest: FRANCISCO OCAMPO.

Note.—On the same day the appropriate certificate was issued to the party interested.

Witness my sign manual. (A scroll.)

A faithful copy of the original to which I refer, and from which it was faithfully taken, corrected and collated in these six sheets of stamped paper.

The other being entered in the Book of Public Instruments.

[L. S.—Stamp clause, as above.]

For the present year. In testimony of truth.

IGN'O PALOMARES.

Attest: IGN'O CORONEL,
Attest: FRANC'O OCAMPO.

Filed in office, October 6th, 1852.

GEO. FISHER, *Sec'y.*

Opinion of Board, by Com'r Felch.

ANDRES DUARTE
vs.
THE UNITED STATES. } For the place called Azusa, containing one and a half square leagues of land.

The claimant has filed in the case a duly certified, traced copy from the archives of the espediente, showing his application for the grant to the prefect of the 2nd district on the 28th day of April, 1841.

A reference for information on the subject reports in answer to the same a favorable report of the prefect to the governor, and an order of concession prepared in the usual form for the signature of the governor, bearing date May 10th, 1843. This is made subject to the approval of the departmental assembly. Judicial possession of the land was given to the claimant on the 8th day of June in the same year, as is shown by the original record thereof, duly substantiated by testimony and filed in the case.

The proof of occupancy residence upon and cultivation of the land, shows a substantial compliance with the conditions of the grant.

The boundaries, according to the return of the juridical survey, seem sufficiently definite.

The claim is confirmed.

Decree.

ANDRES DUARTE
vs.
THE UNITED STATES. }

In this case, on hearing the proof and allegations, it is adjudged by the commission that the said claim of the petitioner is valid, and it is therefore hereby decreed that the same be confirmed. The land hereby confirmed is that known by the name of Azusa, being the same on which he resides, and is bounded and described as follows, to wit: Commencing at the northeast corner of said premises, at the point on the bank of the river Azusa contiguous to the western boundary of land known in 1841 as belonging to Don Luis Arenas, and running

thence in a straight line westwardly close to the sierra, five thousand varas, to an oak tree which was marked for a landmark with a few strokes of the cutlass, on the boundary of the place called Santa Anita; thence, running south five thousand varas to a tall alder tree burned at the foot, adjoining the Papas; thence running east five thousand varas to the bank of the river Azusa, which river is the western boundary of the said Arenas; and thence northwardly along the bank of said river to the foot of the sierra at the north, at the point of commencement, five thousand varas, containing one and a half square leagues of land, be the same more or less; reference for a more particular description to be had to the original grant of said land, and to the land of juridical possession on file in this case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, November 4th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-nine pages, numbered from 1 to 29, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 374 on the docket of the said board, wherein Andres Duarte is the claimant against the United States, for the place known by the name of "Azusa."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-second day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[G. F.]

GEO. FISHER, *Sec'y.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing 30 pages, numbered from 1 to 30, both inclusive, contain a full, true, and correct copy of transcript No. 374, filed in this office, wherein

Andres Duarte is appellee, and the United States are appellants, for "Azusa."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Los Angeles, California, this 20th [L. S.] day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

C. E. CARR, *Cl'k*.

DISTRICT COURT OF THE UNITED STATES,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

ANDRES DUARTE, appellee, ads. THE UNITED STATES, appellants. } Docket No. 46. Transcript No. 374.

Be it remembered, that on the 30th day of August, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the commissioners to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Andres Duarte is the claimant against the United States, for the place named Azusa, was received and filed, and docketed with No. 46, and is as follows, to wit:

(Vide pages .)

LOS ANGELES, *Dec. 5th*, 1854.

In case No. 46, Andres Duarte, for Azusa, notice of appeal from the Atty. General of the United States was filed.

(Vide page 3.)

LOS ANGELES, *Jan'y 5th*, 1855.

In same case, petition of the United States for review was filed.

(Vide page 3.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *February 24th*, 1855.

The answer of Andres Duarte was filed.

(Vide page 8.)

LOS ANGELES, *April 9th*, 1855.

In the same case a motion for an order to take testimony was filed.

(Vide page 9.)

Los Angeles, *April* 16*th*, 1855.

The deposition of Francisco Ocampo was taken and filed in the case.

(Vide page 10.)

Monterey, *June* 14*th*, 1855.

Stipulation filed.

(Vide page 15.)

Monterey, *June* 14*th*, 1855.

Stipulation filed.

(Vide page 15.)

In the same case, the opinion of the court was delivered, confirming the claim, and the following decree was entered:

(Vide page 17.)

Los Angeles, *October* 18*th*, 1855.

In the same case, the following order of appeal was filed:

(Vide page 18.)

Office of the Attorney General of the United States,
Washington, 26*th October*, 1854.

Andres Duarte
vs.
The United States. } 374.

Notice of Appeal.

You will please take notice, that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 26th day of July, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the U. States.

C. CUSHING,
Attorney General.

Filed Dec. 5th, 1854. C. E. CARR, *Clk.*

Petition for Review.

In the District Court of the United States for the southern district of California.

Los Angeles county.

Andres Duarte
vs.
The United States. } No. 374.

To the honorable Isaac S. K. Ogier, judge of the district court of the United States for the southern district of California.

The petition of Pacificus Ord, (of Monterey county,) attorney of the United States for the southern district of California, who petitions

in this behalf for the United States, and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 5th day of October, A. D. 1852, Andres Duarte presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called "Azusa," containing about one and a half square leagues, a little more or less, in the words and figures following, to wit: "The petition of Andres Duarte respectfully showeth, that on or about the 10th day of May, A. D. 1843, Juan B. Alvardo, then governor of California, in the name of the Mexican nation, by virtue of the colonization laws of August 18th, 1824, the regulations of Nov. 21st, 1828, the various laws of Mexico in force at the time, the customs and usages of the country affecting grants of land in California, granted in full property unto your petitioner the tract of land known by the name of Azusa, bounded to the east by the rancho of Luis Arenas, to the west by the boundaries of Santa Anita, to the north by the sierra, and to the south by the road called Papas, containing one and a half square leagues, a little more or less, as described in the papers and map relating to the grant of said tract of land; copies of all said papers and maps are herewith filed, and your petitioner prays leave to refer to the same as part of this petition. And your petitioner further showeth, that on or about the 9th day of June, A. D. 1841, your petitioner was placed in juridical possession of said tract of land or rancho by the proper officer having jurisdiction and authority of the subject-matter, as appears by the original papers in the possession of your petitioner ready to be produced and proved. That copies of said papers herewith filed, to which your petitioner prays leave to refer as part of this petition. The said lands have always since the date of said grant been in the quiet and peaceable possession of your petitioner. And your petitioner at the present time is in the quiet and peaceable possession of said lands. There is no conflicting claim thereto known to your petitioner, unless it may be some pretensions on the part of the U. S. Government, in violation of the rights of private property, the laws of civilized nations, and the spirit of the treaty of Guadalupe Hidalgo between said Government of the U. S. and Mexico. That said lands have not been surveyed by the U. S. surveyor gen'l for California, but have been surveyed and measured at the instance of your petitioner. The evidence upon which your petitioner relies in this case are the records of this grant, papers and maps in the office and in the custody of the U. S. surveyor general for California, original papers in the hands of your petitioner relating to said tract of land; copies of all said papers and maps are herewith filed, to which your petitioner prays leave to refer as part of this petition, and the testimony of witnesses to be produced before your hon. board. Respectfully submitted for such action as the justice and nature of the claim may require."

Your petitioner further represents, that thereafter, to wit, on the

4th day of November, A. D. 1853, the said commissioner confirmed by final decree the said claim of the said Andres Duarte, in the words and figures following, to wit: "Andres Duarte vs. The United States. In this case, on hearing the proof and allegations, it is adjudged by the commission that the said claim of the petitioner is valid, and it is therefore hereby decreed that the same be confirmed. The land hereby confirmed is that known by the name of Azusa, being the same on which he resides, and is bounded and described as follows, to wit, commencing at the northeast corner of said premises, at the point on the bank of the river Azusa contiguous to the western boundary of land known in 1841 as belonging to Don Luis Arenas, and running thence in a straight line westwardly close to the Sierra five thousand varas to an oak tree, which was marked for a landmark with a few strokes of the cutlass, on the boundary of the place called Santa Anita; thence running south five thousand varas to a tall alder tree, burned at the fort adjoining the Papas; thence running east five thousand varas to the bank of the river Azusa, which river is the western boundary of the land of the said Arenas; and thence northwardly along the bank of said river to the foot of the Sierra at the north, at the point of commencement, five thousand varas, containing one and a half square leagues of land, be the same more or less; reference for a more particular description to be had to the original grant of said land, and to the record of juridical possession on file in this case.

"ALPHEUS FELCH,
"THOMPSON CAMPBELL,
"R. AUG. THOMPSON,
"*Commissioners.*

"Filed in office, November 4th, 1853.
"GEO. FISHER, *Sec'y.*"

That thereafter, to wit, on the 30th day of August, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 374, reference to which it is prayed may be had and made a part of this petition. That on the 26th day of July, A. D. 1854, the honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said cause, (No. 374,) and the papers and evidence on which said decree was founded. That thereafter, to wit, on the 5th day of December, A. D. 1854, the said Attorney General of the United States filed, or caused to be filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California, that the appeal in said cause of Andres Duarte vs. The United States, from the decision of the said commissioners to ascertain and settle the private land claims in the State of California, in the district court of the United States for the southern district of California, would be prosecuted by the United States.

Your petitioner further represents, that the said land claimed as aforesaid is within the jurisdiction of this honorable court.

And your petitioner further represents and insists, that the said decree of said commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence, apparent in said certified transcript of said cause now on appeal from said commissioners to this honorable court.

And your petitioner further represents, that the said claim is invalid and the said decree erroneous, on the following grounds:

1. That the said Andres Duarte shows no valid title to the said land claimed by him, as aforesaid; and it is denied that he has any.

2. That the said alleged grant of Governor Alvarado was made in violation of the 4th article of the colonization law of Mexico, of the 18th of August, A. D. 1824, in this, that the land granted, as alleged by claimant, was and is within ten leagues of the seacoast. And there is no evidence by claimant that the supreme general executive power of Mexico previously approved of the colonization of the lands of California within ten leagues of the seacoast. And it is denied that such previous consent of said supreme general executive power of Mexico in such case was ever had.

3. That at the date of the said alleged grant, the said land claimed as aforesaid was occupied by, and in the possession of, the Missions of California, and particularly by the Mission of San Gabriel, and could not therefore be colonized.

4. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the law of Mexico of the 18th of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico, of the 21st of November, A. D. 1828.

5. That the description of the land in the said alleged grant of said date is vague and indefinite.

6. That there is no evidence that the said grant was ever approved by the departmental assembly of California. And it is denied that it was ever approved by said assembly.

7. That the said claimant shows no definitive grant for said land; and it is denied that he ever had a definitive grant.

8. That the alleged act of juridical survey and possession, of the date of the 9th of June, A. D. 1841, is void, because the justice of the peace, Ignacio Palomeres, could not give the juridical possession of the said land, except in virtue of a definitive grant.

9. That the alleged juridical survey and possession was not made according to the said grant and map referred to therein, nor according to the ordinance or law; and it is vague and indefinite.

10. That there is no evidence that the said claimant built a house on the said land within one year from the date of the said grant, and that it was occupied, and that he cultivated the land; and it is denied that he built a house on the said land within one year from the date of the said grant, and that it was occupied by him, and that he cultivated said land.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon, but the said petition ought to have been dismissed, and said claim rejected by said commissioners upon the grounds aforesaid.

Wherefore, the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, by reason of the premises and the laws and statutes in such case made and provided, prays that the said Andres Duarte, or his attorney, may be served with a copy of this petition, and that this honorable court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Andres Duarte for said land claimed and confirmed as aforesaid, and that the same may be decreed invalid. And all such other orders, judgments or decrees as may be just, with costs and general relief.

(Sgd.) P. ORD,
Attorney of the United States
for the southern district of California.

Filed January 5th, 1855.

C. E. CARR, *Cl'k.*

Answer to Petition for Review.

In the District Court of the United States for the southern district of California.

ANDRES DUARTE ads. THE UNITED STATES. } No. 374.

To the Hon. Isaac S. K. Ogier, judge of the District Court of the United States for the southern district of California.

The answer or Andres Duarte, a citizen of the United States, residing in the county of Los Angeles, in the State of California, to the petition of review filed in the above entitled cause, at the suit of the United States against him, praying that a certain final decree of confirmation entered in his favor by the U. S. land commissioners appointed to ascertain and settle the private land claims in the State of California, in a certain claim for a tract of land called "Azusa," may be set aside and reversed, respectfully represents: That this defendant admits that he did present his petition to the said commissioners for the tract of land described in said petition, and that the said commissioners did enter a final decree of confirmation in his behalf for the said tract of land. And this defendant further answering saith, that he claims the said tract of land called "Azusa," with the metes and bounds referred to in the transcript from said commissioners relating to his said claim, which transcript was filed in the clerk's office of your hon. court, on the 30th day of August, 1854, and is hereunto specially re-

You said and made a part of this answer; that he claims the same in virtue of a grant in fee thereof, made to him, as set forth in his petition presented to said commissioners, filed in the office of the secretary of the board of said commissioners, on the 5th day of October, 1852, as appears in said transcript, on the 10th day of May, 1843, by Juan B. Alvarado, then governor of California, by virtue of authority in him vested by law; that the metes and bounds of said claim are accurately defined in the map and judicial survey and possession thereof; both of which appear in said transcript, hereunto specially referred and made a part of this answer.

And this defendant further answering, saith, that he has faithfully discharged all the conditions imposed upon him by said grant. And he further avers that his said claim is valid, as appears by the said transcript and the decree of the said commissioners, and as will be made to appear by such further proof as may be taken by order of your honor; and that the final decree of said commissioners is valid, according to the laws, usages, and customs of Spain and Mexico, as they existed in California, and according to the treaty of Guadalupe Hidalgo, the laws of nations, the principles of equity, and the decisions of the Supreme Court of the United States, as far as they are applicable.

And defendant further answering denies all and singular the allegations in plaintiff's petition contained, excepting such as are herein admitted. And this defendant further avers, that there exists no cause, by reason of any thing alleged in said petition, why said final decree should be declared invalid.

Wherefore the defendant prays that your honor do declare the said final decree of said commissioners, as well as the claim and title of this defendant to the said land, to be valid, that the petition of the United States be dismissed, and for costs and general relief.

(Sgd.) AGUSTIN OLVERA,
Attorney in fact of defendant.

Filed February 24th, 1855.
(Sgd.) C. E. CARR, *Cl'k.*

Motion for Order to take Testimony.

U. S. District Court.

ANDREW DUARTE, appellee, ads. THE UNITED STATES, appellant. } No. 46.

And now at this day comes the said appellee, by Myron Norton and Agustin Olvera, his attorneys, and moves the court for an order to take further testimony in the above entitled case by either party.

(Sgd.) MYRON NORTON,
Atty. for Appellee.

Filed April 9th, 1855.
(Sgd.) C. E. CARR, *Cl'k.*

Testimony of Francisco Ocampo, before C. E. Carr, U. S. Commissioner.

Los Angeles, *April* 16*th*, 1855.

Andres Duarte, appellee, ads. The United States, appellants. } No. 46.

Wm. G. Dryden, interpreter, sworn.

Francisco Ocampo, being duly sworn, answers as follows to questions of appellee's counsel.

1st question. What is your name, age, and place of residence?

Answer. My name is Francisco Ocampo; my age 33 years; my residence the county of Los Angeles.

2d question. Do you know the rancho of Azusa, occupied and claimed by Andres Duarte?

Answer. I do.

3d question. Do you know who was first justice of the peace and judge of first instance for the district of Los Angeles on the 7th day of June, 1841?

Answer. I do; it was Don Ignacio Palomeres.

4th question. Do you know if judicial possession was given to Andres Duarte for the rancho of Azusa? And, if so, state when, and by what officer, and in presence of what witnesses, naming them.

Answer. The first alcalde and judge of 1st instance was Ignacio Palomeres, who gave judicial possession in presence of Ignacio Coronel and myself. This was in the year 1841; I do not remember the particular month.

5th question. Was the land measured at that time; and, if so, by whom?

Answer. The land was measured, and by the judge and two witnesses which he then appointed.

6th question. Was there any act of possession made out and signed at that time; and, if so, by whom was it signed?

Answer. There was by the judge an act of possession made out, and signed by the judge and his witnesses of assistance, which witnesses were Ignacio Coronel and myself, the judge being Ignacio Palomeres.

7th question. Describe as near as you can the tract of land which was measured at that time, and of which judicial possession was given to the said Andres Duarte, and how much land it contained.

Answer. I will state as near as I can recollect:

The land is a plain; adjoins the land of Dalton, also called Azusa, on the side next to the mountain, also the rancho of Santa Anita, also with the land that belonged to the Mission of San Gabriel, known by the name of Los Papas, and with the lands of the Puente. I do not remember positively the number of leagues.

8th question. State, if you can remember, at what point the surveyor measurement commenced.

Answer. The surveyor measurement commenced on the bank of the river Azusa, which point of beginning was nearer than far off from the sierra. The said beginning point was on the line of the Azusa rancho.

9th question. To whom did the rancho called Azusa, now owned by Dalton, belong at that time?

Answer. To Don Luis Arrenas.

10th question. From this point, in what direction was the line run?

Ans. In a westerly direction, along and near the base of the hills, to an oak tree, which was marked with a knife, and on the boundary line of Santa Anita.

11th question. From the oak tree, in what direction was the line run?

Answer. In the direction of the place called Los Papas, to a sycamore tree before reaching Los Papas.

12th question. Then in what direction was the line run?

Answer. From there in an easterly direction to the bank of the river Azusa. I am not positive of this, but think so. The river San Gabriel is there called Azusa.

13th question. From the river, in what direction there was the line run?

Answer. From the river inwards towards the mountains to the boundary line of Azusa.

14th question. From there, in what direction was the line drawn?

Answer. In the same direction until it came to the mountain of San Gabriel.

15th question. How many leagues distant is this land from the coast?

Answer. It is fourteen leagues from the seacoast—a little more or less.

16th question. State whether or not Andres Duarte, at that time, took possession of the land; and if so, how long has he occupied it, and in what manner?

Answer. He took possession of the land in 1841, and has resided upon it up to this time, having built thereon houses, corrals, and cultivated a portion thereof, having also horses and cattle upon the same, and also residing there with his family. Before the concession, he had constructed a temporary brush structure thereon, and immediately after the concession he built a house, residing therein with his family, remaining there with his family up to the present time.

Cross-examined by P. Ord, U. S. Att'y.

I was born in Tepic, republic of Mexico, and have resided in California for the last twenty-two years. I am a ranchero. In 1841 my occupation was that of taking care of horses and cattle of my own. I think that judicial possession of the said rancho was given in June or July, 1841. I signed, as a witness, the act of judicial possession, on the ranch, on the day possession was given. One part of the proceedings was signed there on the ranch, and one part here in the city of Los Angeles, in the alcalde's office. The part of the proceedings

which was signed on the rancho, I think, was signed in the ho[use] Arrenas, but I am not certain. Hugo Reid representing Santa An[ita] Luis Arrenas or his mayordomo, who represented him or Azusa, [I] does not remember which; also the mayordomo of the Mission of San Gabriel, and the same who represented San Gabriel, or some one else, representing the Puente, the Papas adjoining the Mission of San Gabriel. I think there was a young man by the name of Valenzuela. There were two chain-bearers; I think Felipe Valenzuela was one, the other I cannot recollect. These are all that I recollect as being present. The rope-bearers or measurers were sworn. The ropes were of one hundred varas in length. Andres Duarte was also present. The measurement was made on horseback.

The rope had a stake tied to each end, about two and a half or three varas in length; one of these stakes was planted at the point of beginning by one of the measurers on horseback, and the other rode on to the distance of the length of the rope, and there planted his stake, and so on to the end. There was no permanent stake put at the place of beginning. While the measurement was being made, the alcalde and the two witnesses rode along with them. I do not recollect the number of cordels upon any of the lines measured. I think we were two days in making the measurement, though I am not certain. That owing to some of the adjoining owners of lands not appearing, the measurement was commenced at a late hour, and could not be concluded until the next day. I think there was a question or dispute on the first day, on the part of Hugo Reid, claimant of Santa Anita rancho. The dispute was settled at the time, on the ground, between Reid, the claimant of Santa Anita, and Andres Duarte, who agreed that the encina should be one of the corners of the boundary between them. The oak, which was marked as one of the corners of the possession of the ranch of Duarte, was situated about 1,500 varas from the foot of the sierra, which runs in the rear, and nearly parallel with the first line measured. The first corner at which we commenced the measurement on the bank of the river was, I think, about 1,000 or 1,500 varas from the foot of the sierra, but I am not certain. The third corner ended near the road of the Mission of San Gabriel, or the sycamore, near the Papas, which was a notable tree, high, and having but few limbs. There were about five trees at this place, and this was the tallest. I do not remember that this sycamore was burnt or blackened. From the sycamore we went in an easterly direction to the bank of the Azusa, or San Gabriel river, on this side; thence we measured along the west bank of the river to the place of beginning. At that time there were but a few, if any, of the cattle belonging to the Mission of San Gabriel running upon the rancho of Duarte.

Question. At the time of giving judicial possession did you see, in the hands of Duarte or the alcalde, the title-papers of the rancho? To which counsel for claimant objected.

Answer. I did. I saw the petition of Duarte, and order of the governor making the grant. I also saw the map belonging to the espediente in the hands of the judge.

Question. Look at the document purporting to be a copy of the original map belonging to the original espediente, at page 7 of the certified transcript in this case from the land commissioners, on file in this case, and say whether or not it is a correct copy of the map you saw, at the time judicial possession was given, in the hand of the judge, as before stated?

Answer. I see and know the mountains of San Gabriel, also the windings of the river Azusa, the road of Los Papas, and the line of Santa Anita; and I think the land described in that boundary to be the land of Duarte, because I see the land on the right of Luis Arrenas; but to say positively, I think a man should be a surveyor to say that this is a correct copy of the map I saw when judicial possession was given. I think this like the map I saw when possession was given. The third line run was three or four hundred varas to the north of the road called Camino de las Papas, or the road from the mission of San Gabriel to San Bernardino, as shown on the map, which was outside of the measurement of the land of Duarte. At the time judicial possession was given, the judge ordered Duarte to place landmarks; but I do not know if Duarte did so.

After the foregoing testimony had been read to the witness, he desired to make the following correction of his testimony in the direct examination:

From the third point of the measurement on the bank of the river Azusa, witness says, the line was run along the bank of the river in a northerly direction up into where the river comes out of the mountain, and to the point of beginning.

(Sgd.) FRAN'CO OCAMPO.

Sworn to and subscribed before me, this 16th day of April, 1855.

(Sgd.) C. E. CARR,
U. S. Commissioner.

Filed April 16th, 1855.

C. E. CARR, *Cl'k.*

ANDRES DUARTE ads. THE UNITED STATES. } No. 46.—Transcript No. 374.

Monterey, June term, 1855.

In the U. S. Dist. Court for the southern district of California.—Hon. Isaac S. K. Ogier, judge.

Stipulation.

It is stipulated by and between Myron Norton, att'y for claimant, and Pacificus Ord, att'y for the U. States in the above entitled cause, that all objections as to the regularity or legality of this present term or sitting of the court at Monterey, are hereby waived in said cause.

And it is further stipulated and admitted, that the lands claimed in this cause are situate in the county of Los Angeles, and in the south-

ern district and State of California, and within the jurisdiction of said court, as alleged in the petition for review of the U. S. dist. attorney.

And it is further stipulated and admitted, that the transcript in this cause was received by the Attorney General of the U. States, and the notice of appeal given in the manner and at the time and places as alleged in said petition for review.

(Sgd.) P. ORD,
U. S. Dist. Att'y.

(Sgd.) MYRON NORTON,
Att'y for Claimant.

June , 1855.

Filed June 14th, 1855.

(Sgd.) C. E. CARR.

THE UNITED STATES, appellant,
vs.
ANDRES DUARTE, appellee. } No. 46.—"Azusa."

In the United States District Court for the southern district of California.

Stipulation.

It is hereby stipulated and agreed by and between Pacificus Ord, attorney of the United States, and Myron Norton, attorney for the appellee in this case, that the said case be set down for trial and finally submitted to the court at this present June term thereof, at the city of Monterey; hereby waiving any and all objections there might be as to the regularity of said term.

Monterey, June 14th, 1855.

(Sgd.) P. ORD, *Dist. Att'y.*

(Sgd.) MYRON NORTON,
Att'y for Appellees.

Filed June 14th, 1855.

(Sgd.) C. E. CARR, *Cl'k.*

District Court of the United States for the southern district of California.

ANDRES DUARTE, appellee,
ads.
UNITED STATES, appellants. } No. 46.—For Azusa.

Decree.

This cause coming on to be heard at a stated term of this court, on an appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved 3rd March, 1851, upon the transcript of the decision and proceedings, and of the papers and evidence on which said decision was founded, and on additional testimony taken in this court; and it appearing that said transcript has been duly filed according to law, and

Question. Look at the document purporting to be a copy of the original map belonging to the original espediente, at page 7 of the certified transcript in this case from the land commissioners, on file in this case, and say whether or not it is a correct copy of the map you saw, at the time judicial possession was given, in the hand of the judge, as before stated?

Answer. I see and know the mountains of San Gabriel, also the windings of the river Azusa, the road of Los Papas, and the line of Santa Anita; and I think the land described in that boundary to be the land of Duarte, because I see the land on the right of Luis Arrenas; but to say positively, I think a man should be a surveyor to say that this is a correct copy of the map I saw when judicial possession was given. I think this like the map I saw when possession was given. The third line run was three or four hundred varas to the north of the road called Camino de las Papas, or the road from the mission of San Gabriel to San Bernardino, as shown on the map, which was outside of the measurement of the land of Duarte. At the time judicial possession was given, the judge ordered Duarte to place landmarks; but I do not know if Duarte did so.

After the foregoing testimony had been read to the witness, he desired to make the following correction of his testimony in the direct examination:

From the third point of the measurement on the bank of the river Azusa, witness says, the line was run along the bank of the river in a northerly direction up into where the river comes out of the mountain, and to the point of beginning.

(Sgd.) FRAN'CO OCAMPO.

Sworn to and subscribed before me, this 16th day of April, 1855.

(Sgd.) C. E. CARR,
U. S. Commissioner.

Filed April 16th, 1855.

C. E. CARR, *Cl'k.*

ANDRES DUARTE ads. THE UNITED STATES. } No. 46.—Transcript No. 374.

Monterey, June term, 1855.

In the U. S. Dist. Court for the southern district of California.—Hon. Isaac S. K. Ogier, judge.

Stipulation.

It is stipulated by and between Myron Norton, att'y for claimant, and Pacificus Ord, att'y for the U. States in the above entitled cause, that all objections as to the regularity or legality of this present term or sitting of the court at Monterey, are hereby waived in said cause.

And it is further stipulated and admitted, that the lands claimed in this cause are situate in the county of Los Angeles, and in the south-

ern district and State of California, and within the jurisdiction of said court, as alleged in the petition for review of the U. S. dist. attorney.

And it is further stipulated and admitted, that the transcript in this cause was received by the Attorney General of the U. States, and the notice of appeal given in the manner and at the time and places as alleged in said petition for review.

(Sgd.) P. ORD,
U. S. Dist. Att'y.

(Sgd.) MYRON NORTON,
Att'y for Claimant.

June , 1855.

Filed June 14th, 1855.

(Sgd.) C. E. CARR.

THE UNITED STATES, appellant,
vs.
ANDRES DUARTE, appellee.
} No. 46.—"Azusa."

In the United States District Court for the southern district of California.

Stipulation.

It is hereby stipulated and agreed by and between Pacificus Ord, attorney of the United States, and Myron Norton, attorney for the appellee in this case, that the said case be set down for trial and finally submitted to the court at this present June term thereof, at the city of Monterey; hereby waiving any and all objections there might be as to the regularity of said term.

Monterey, June 14th, 1855.

(Sgd.) P. ORD, *Dist. Att'y.*

(Sgd.) MYRON NORTON,
Att'y for Appellees.

Filed June 14th, 1855.

(Sgd.) C. E. CARR, *Cl'k.*

District Court of the United States for the southern district of California.

ANDRES DUARTE, appellee,
ads.
UNITED STATES, appellants.
} No. 46.—For Azusa.

Decree.

This cause coming on to be heard at a stated term of this court, on an appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved 3rd March, 1851, upon the transcript of the decision and proceedings, and of the papers and evidence on which said decision was founded, and on additional testimony taken in this court; and it appearing that said transcript has been duly filed according to law, and

counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of the said commissioners be affirmed, and that the claim of the said Andres Duarte to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed to the extent of one and a half square leagues: Provided, that the said quantity of one and a half square leagues be contained within the limits called for in said grant and map, to which it refers, but if there be less than said named quantity, then the claim of said appellee to said less quantity is hereby confirmed.

(Signed) ISAAC S. K. OGIER,
U. S. District Judge.

Filed Sept. 19th, 1855.
(Signed) C. E. CARR, *Clk.*

In the U. States District Court for the southern district of California.
Special term—Los Angeles, 1855.

ANDRES DUARTE, appellee, ads. THE UNITED STATES, appellants. } No. 46.—Transcript No. 374.

Order of Appeal.

On motion of P. Ord, Attorney of the United States for the southern district of California, it is ordered by the court that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this court against the United States in the above entitled cause, rendered on or about the 19th day of Sept., A. D. 1855.

(Signed) P. ORD,
U. S. Dist. Atty.

Filed Oct. 18, 1855.
(Signed) C. E. CARR, *Clk.*

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify the foregoing eighteen pages, numbered 1 to 18, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of the testimony of witnesses upon which the same is founded, on file in this office in case No. 46 on the docket of the said court, wherein Andres Duarte is appellee, and the United States are appellants, for Azusa.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Los Angeles, California, this twentieth day of December, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.]

C. E. CARR, *Clk.*